

Contact: Andrea Anania

ANNUAL REPORT ON COMPETITION WITH PRIVATE ENTERPRISE

Action Requested: Receive the annual report.

Executive Summary: State law prohibits the Regents institutions from competing with private enterprise except in certain situations. The Board's Policy Manual states that Regent institutions shall not engage in competition with private enterprise unless the activity will assist in the education, research, extension, or service mission of the institutions.

Each institution has a committee to review potential situations that may compete with private enterprise. No complaints were received by any of the Regent institutions during the past year. However, three sales opportunities were reviewed by Iowa State University's competition review committee. (See page 3.)

The University of Iowa, University of Northern Iowa, Iowa School for the Deaf, and the Iowa Braille and Sight Saving School reported no sales opportunities or any other inquiries were received during that same timeframe.

Background:

Iowa Code Chapter 23A prohibits a public entity from competing with private enterprise unless specifically authorized by statute, rule, ordinance, or regulation and authorizes the Board of Regents to provide, by administrative rule, exemptions to this prohibition for the institutions under the control of the Board.

Iowa Code §23A.2(2) lists exemptions and §23A.2(10)k lists items for which the chapter does not apply. Both lists may be found on page 2.

Iowa Administrative Code (IAC) §681-9.4 and Regent Policy Manual §7.08D specify the Board's rules and requirements regarding competition with private enterprise by Regents institutions.

Each institution has established written policies regarding competition with private enterprise to ensure that:

- ♦ Activities provided by the institutions are consistent with Board policy.
- ♦ Processes are identified to handle inquiries about activities carried out by the institution.
- ♦ There is a means for community businesses to interact with the institutions including discussion of complaints.

Exemptions from Competition with Private Enterprise

**Iowa Code
§23A.2(2)**

The state Board of Regents or a school corporation may, by rule, provide for exemption from the application of this chapter for any of the following:

- a. Goods and services that are directly and reasonably related to the educational mission of an institution or school.
- b. Goods and services offered only to students, employees, or guests of the institution or school and which cannot be provided by private enterprise at the same or lower cost.
- c. Use of vehicles owned by the institution or school for charter trips offered to the public, or to full, part-time, or temporary students.
- d. Durable medical equipment or devices sold or leased for use off premises of an institution, school, or University of Iowa Hospitals or Clinics.
- e. Goods or services which are not otherwise available in the quantity or quality required by the institution or school.
- f. Telecommunications other than radio or television stations.
- g. Sponsoring or providing facilities for fitness and recreation.
- h. Food service and sales.
- i. Sale of books, records, tapes, software, educational equipment, and supplies.

**Iowa Code
§23A.2(10)k**

This chapter does not apply to the following on-campus activities of an institution or school under the control of the state Board of Regents or a school corporation:

- (1) Residence halls.
 - (2) Student transportation, except as specifically listed in §23A.2(2)(c).
 - (3) Overnight accommodations for participants in programs of the institution or school, visitors to the institution or school, parents, and alumni.
 - (4) Sponsoring or providing facilities for cultural and athletic events.
 - (5) Items displaying the emblem, mascot, or logo of the institution or school, or that otherwise promote the identity of the institution or school and its programs.
 - (6) Souvenirs and programs relating to events sponsored by or at the institution or school.
 - (7) Radio and television stations.
 - (8) Services to patients and visitors at the University of Iowa Hospitals and Clinics, except as specifically listed in §23A.2(2)(d).
 - (9) Goods, products, or professional services which are produced, created, or sold incidental to the schools' teaching, research, and extension missions.
 - (10) Services to the public at the Iowa State University College of Veterinary Medicine.
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Analysis:

IOWA STATE UNIVERSITY

BIOMARKER ASSAYS

The Department of Human Development and Family Studies (DHDFS) developed a process to obtain more precise assay results than commercial labs by using specialized equipment to perform extractions from hair and saliva to report results. The assays are for biomarkers that track how youth develop, which is relevant to the mission of DHDFS. Researchers at other institutions are interested in this unique biomarker assay process and wish to send samples to the DHDFS lab.

The Competition with the Private Sector Review Committee reviewed the sales opportunity. It concluded the services being offered were unique and not found in the private sector. Rates were reviewed and the sales of services was approved.

CONSTRUCTION AND MANAGEMENT OF A CREMATION GARDEN

An attorney from the Attorney General's office reviewed an agreement for the construction and management of a cremation garden and questioned whether ISU had considered that it may be in competition with the private sector.

The issue was reviewed by the Competition with the Private Sector Review Committee prior to being presented to the Board of Regents. (See links below.)

The Committee concluded that it is a legitimate institutional and alumni activity. The service is not offered to the general public and is directly and reasonably related to the educational mission of the University.

- ▶ Property and Facilities Committee memorandum – August 2015
http://www.regents.iowa.gov/Meetings/DocketMemos/15Memos/August2015/0815_p&f05.pdf
- ▶ Minutes of August 5, 2015
http://www.regents.iowa.gov/Meetings/DocketMemos/15Memos/September2015/0915_ITEM02a.pdf

STERILE COMPOUNDING PHARMACY SERVICES

While conducting a routine audit at the College of Veterinary Medicine, an internal auditor questioned if the practice of selling compounded medications to referring veterinarians had been reviewed by the Competition with the Private Sector Review Committee. A review located three other pharmacies within Iowa that provided sterile compounded medications.

Chapter 23A exempts services to the public at the ISU College of Veterinary Medicine. The Committee concluded that selling compounded medications is part of the Veterinary Medicine Clinic's existing service and is appropriately limited to referring veterinarians. The Iowa State University Veterinary Medical Center Hospital pharmacy does not provide these medications to non-referring veterinarians so the activity was determined to be within the statutory exemption.